

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of }
FRAGEDIO OANDASAN, ET AL, }

Appearances:

For Appellants: Robert E. Wright, Attorney at Law

For Respondent: F, Edward Caine, Associate Tax Counsel;
James Philbin, Junior Counsel

O P I N I O N

These appeals are made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of the following Appellants to proposed assessments of additional personal income tax and penalties in the amounts and for the years indicated:

<u>Appellants</u>	<u>Year</u>	<u>Amount</u>
Fragedio Oandasan	1950	\$ 521.10**
	1951	1,277.36**
	1952	1,990.70**
	1953	402.56**
	1954	43.20*
Pedro P, Catedral	1951	289.31
	1952	401.16
	1953	169.20
	1954	55.66
Mariano D. and Frances A. Filart	1951	299.36
	1952	296.25
	1953	578.29
	1954	129.86
Pructoso C. Gregorio	1952	57.51
	1953	58.33
	1954	62.39
Jose T. and Rosario Tajon	1951	91.79
	1952	16.29
	1953	105.34
	1954	29.70

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<u>Appellants</u>	<u>Year</u>	<u>Amount</u>
Isidro P. Javier	1952	\$ 21.31
	1953	209.75
	1954	57.41
Zoilo S. Bonifacio	1951	373.15
	1952	553.10
	1953	931.96
	1954	174.11
M. and A. Cabonce	1951	305.10
	1952	248.39
	1953	1,127.60
	1954	252.40
Guillermo M. Ducusin	1951	300.83
	1952	546.58
	1953	1,336.56
	1954	344.75
M. Fiji	1951	306.65
	1952	401.16
	1953	933.40
	1954	223.68
Joseph A. Sabino	1951	68.64
	1952	252.15
	1953	56.63
	1954	68.11
Hilario M. and Gloria' Tajon	1951	30.21
	1952	3.55
	1953	54.38
	1954	61.43
Gabriel De Leon	1951	222.96*
Tiburcio Hopolar, aka Ted Munar	1952	78.13
	1953	35.03
	1954	54.25
Yoshiko de Leon	1951	222.96
Alfredo P. Tuzon	1951	54.63
	1952	198.51
	1953	49.20
	1954	79.83

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<u>Appellants</u>	<u>Year</u>	<u>Amount</u>
Matias Galido	1951	\$ 385.58
	1952	89.80
	1953	410.64
	1954	101.35
Angel L, Galindo	1951	77.66
	1952	25.83
	1953	80.81
	1954	18.78
Pedro B. and Patria Bretan	1953	477.54
	1954	104.56
Hermogenes R. Ped	1951	174.71
	1952	41.19
	1953	175.14
	1954	45.04
Massey L. and Mary Padilla	1951	130.70
	1952	45.71
	1953	105.93
	1954	36.75
Manuel A. Martinez	1951	259.95
	1952	49.93
	1953	249.86
	1954	54.25
Moises and Sandra Julio	1951	54.84
	1953	10.90
Venancio and Mary Medina	1951	53.94
	1953	69.65
	1954	26.18
Lazaro V. Tatco	1952	401.39
	1953	1,455.16
	1954	537.44
Elesio and Emily Casabar	1951	55.30
	1953	25.00
Rosendo Tankay	1951	303.68
	1952	419.58
	1953	970.99
	1954	223.68

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<u>Appellants</u>	<u>Year</u>	<u>Amount</u>
Steve Mandoza	1951	\$ 255.20
	1952	392.71
	1953	538.63
Steve and Georgiana M. Mendoza	1954	120.13*
Maria V. Reyes	1951	256.59*
Salvador D. Reyes	1951	252.59*
Salvador D. and Maria Reyes	1952	4.57*
Frank D, Amian	1953	47.31*
	1954	12.90
Frank D. and Dorothy Amian	1951	49.74
George C. and Jerry Cabotage	1951	54.18
	1952	28.01
	1953	106.09
	1954	29.40*
Manuel P, and Edna Javier	1951	28.64
	1952	24.28
	1953	22.65
Manuel P. Javier	1954	23.66
Bonifacio Villa	1951	334.31
	1952	461.16
	1953	972.50
	1954	248.94
Anastacio Lingatong	1951	289.31
	1952	401.16
	1953	933.40
	1954	223.68
N, and Endia Tiempo	1951	2,070.18*
	1952	461.88
	1953	1,590.58
	1954	394.81
Alaonso H. Tongal	1951	216.59
	1952	49.93
	1953	235.05
	1954	68.24

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<u>Appellants</u>	<u>Year</u>	<u>Amount</u>
Fermin Balanon	1951	8 57.51
	1952	63.38
	1953	57.18
	1954	79.74
Thomas Camarillo	1953	172.59
	1954	187.19
Anastacio C. and Vivian Gregorio	1951	80.34
	1952	173.40
	1953	100.31
	1954	74.48
Larry Tabot	1951	271.08
	1952	72.56
	1953	292.16
	1954	64.46
Cleto C. Tablang	1951	334.00
	1952	91.24
	1953	149.46
	1954	33.83
Blandino B. Cespon	1951	80.87*
	1952	24.89*
	1953	92.54*
	1954	33.15*
Theodora O. and Irene Fermin	1950	441.83**
	1951	4,183.84**
	1952	1,704.70**
	1953	1,434.31**
	1954	206.28*
Timoteo Bacamante	1951	9.38
	1953	9.66
	1954	6.44
Victor V. Carrillo	1951	1,033.36
	1952	268.20
	1953	1,529.35
	1954	632.05
Juan Bernadus Casicas	1951	
	1952	151.09 232.14
	1953	255.75
	1954	172.23

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<u>Appellants</u>	<u>Year</u>	<u>Amount</u>
Leon de Ocampo	1951	\$ 113.91
	1953	48.24
	1954	14.64
Estate of Tony B. Tagad (now Dec'd.) and Patricia Tagad	1951	48.66
	1952	60.93
Paterio B. Sularte	1951	271.08
	1952	61.61
	1953	294.81
	1954	83.64
Julio M. Satentes	1951	2,105.80
	1952	616.05
	1953	422.55
	1954	113.10

All of the above amounts except those designated by a single asterisk include penalties of 25 percent imposed under Section 18681 of the Revenue and Taxation Code for failure to file timely returns. The amounts designated by a double asterisk include, in addition to those penalties, fraud penalties of 50 percent imposed under Section 18685. The penalties are not in question except to the extent that their-dollar amounts depend upon the amounts of-the taxes which are due. Although some assessments for the year 1950 were included in the appeals, no issue has been raised with respect to them.

Since the filing of their appeal, Appellants George C. and Jerry Sabotage have paid the amounts of \$72.64, \$36.22 and \$132.02 for the years 1951, 1952 and 1953, respectively. These amounts include the assessments proposed against them for those years and accrued interest. Pursuant to Section 19061.1 of the Revenue and Taxation Code, their appeal for those years will be treated as from the denial of claims for refund.

During the years 1951 through 1954 Appellants, in different combinations, owned and operated four clubs, each of which was in the form of a joint venture. Games of chance, specifically, Keno, Chinese Dominos and Fan-Tan, were played in these clubs and the games were backed by Appellants. All of the clubs were operated in substantially the same manner. Patrons played the games with chips which they obtained from a club cashier in exchange for their money. Whenever a player stopped playing, whatever chips he had left could be converted back to cash. The clubs followed a rule that the play was to be uninterrupted as long as any of the patrons wished to

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continue. The clubs were open each day from the middle of the afternoon until early in the evening. At the end of each day, the cashier counted the chips redeemed from players, the chips received from the games and the cash on hand to determine the amount won or lost that day. This amount was entered in the books under the designation of "win day" or "loss day", as the case might be,

The Franchise Tax Board determined that the total of the amounts shown on the books on "win days" was a net figure representing only 15 percent o-innings on each chance event during those days. It treated the total of those winnings as gross income and increased the gross income of the Appellants accordingly. It disallowed deductions from that income pursuant to Section 17359 of the Revenue and Taxation Code because the income was derived from illegal activities.

The Franchise Tax Board states that the figure of 15 percent was based upon its examination of records, seized by the District Attorney from one of the clubs, which showed in detail the daily gross receipts, payouts and commissions or winnings from Keno for the period of April 1 through September 7, 1953. It states that information from Appellants and others indicated that the margin of the clubs in Chinese Dominos and Fan-Tan was between 5 and 10 percent and that, therefore, it has resolved the doubt in favor of the Appellants by using the 15 percent figure. The Franchise Tax Board states that the omission from its determination of gross income on "loss days" similarly favors the Appellants since there was undoubtedly some gross income received from the games on those days.

Appellants do not deny that the games were in the class of illegal activities specified in Section 17359. Although they have stated that they cannot identify the records seized by the District Attorney and have objected to consideration of them, they have neither alleged nor attempted to establish that the figure of 15 percent used by the Franchise Tax Board is erroneous. Their contention is that the total of the amounts by which their clubs were ahead at the end of "win days" represents their total gross income.

Section 17359 (now 17297) of the Revenue and Taxation Code provides:

"In computing net income, no deductions shall be allowed to any taxpayer on any of his gross income derived from illegal activities as defined in Chapters 9, 10 or 10.5 of Title 9 of

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Part 1 of the Penal Code of California; nor shall any deductions be allowed to any taxpayer on any of his gross income derived from any other activities which tend to promote or to further, or are connected **or** associated with, such illegal activities. "

With respect to a person engaged in the illegal business of accepting bets on horse races, the California District Court of Appeals has held that "By enacting Section 17359 the Legislature has expressed its clear intention not only that that portion of the gross income of a bookmaker which represents his illegal winnings is the total of such winnings without exclusion of bets lost, but also that bets lost by a bookmaker are not deductible from his gross income for income tax purposes." (Hetzel v. Franchise Tax Board, 161 Cal. App. 2d 224.) While the Hetzel case dealt with a bookmaker, the principle announced therein applies to the instant case.

Appellants argue, however, that because the clubs followed a rule of continuing the play as long as the patrons wished, each day's play was an integrated operation from which no winnings could be considered as derived until the final outcome at the end of the day. We cannot subscribe to this approach. Under the reasoning of the Appellants, a club would never have any winnings if it were able to attract patrons for 24 hours a day.

The amounts by which the clubs were ahead at the end of the day were net amounts, arrived at by offsetting losses against winnings on each chance event during the day. The gross income of the Appellants was composed of the total of the winnings on each chance event, and Section 17359 prohibits the deduction of losses from that income. Appellants have made no attempt to establish that the total of the winnings on each chance event was less than the gross income as determined by the Franchise Tax Board,

ORDER

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the

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action of the Franchise Tax Board on the protests of the Appellants named in the Opinion of the Board on file in this proceeding against proposed assessments of additional personal income tax and penalties in the amounts and for the years specified in the said Opinion be and the same is hereby sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to Section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of *George C.* and Jerry Cabotage for refund of personal income tax and interest in the amounts of \$72.64, \$36.22 and \$132.02 for the years 1951, 1952 and 1953, respectively, be and the same is hereby sustained,

Done at Sacramento, California, this 23rd day of July, 1959, by the State Board of Equalization.

Paul R. Leake, Chairman

George R. Reilly, Member

Alan Cranston, Member

John W. Lynch, Member

Richard Nevins, Member

ATTEST: Dixwell L. Pierce, Secretary